

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re I.A., a Person Coming Under the
Juvenile Court Law.

B262155
(Los Angeles County
Super. Ct. No. CK77857)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAVID A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Annabelle G. Cortez, Judge. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant
County Counsel, and William D. Thetford, Principal Deputy County Counsel, for
Plaintiff and Respondent.

David A. (father) appeals the trial court order finding jurisdiction over his six-year-old son I.A. on the basis of father's sexual abuse of his stepdaughter when she was a similar age, and removing I.A. from his custody. We affirm.

BACKGROUND

Petition and detention

On May 13, 2014, the Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code¹ section 300, subdivisions (b) and (d), alleging that father failed to protect his five-year-old son I.A. by sexually abusing I.A.'s 14-year-old half-sister (hereinafter, victim) when she was eight years old, putting I.A. at risk of physical harm and sexual abuse. DCFS received a referral stating that the victim and her grandmother and legal guardian (MGM) reported that father (the victim's stepfather) molested the victim when she was eight. The victim told MGM that father attempted three times to put his penis in her, and she stopped him each time. MGM reported the abuse to the victim's therapist and to the police. The victim had been diagnosed with major depressive disorder, ADHD, parent and child relationship disorder, and PTSD, and had been prescribed Ritalin.

The victim's mother, from whom father was divorced in August 2012, had three other children, each from a different biological father: the victim's older sister, who also lived with MGM; I.A., who lived with father; and the victim's other half-brother, who lived with his father. I.A., the only child involved in this appeal, was in father's primary physical custody, and mother had visitation rights and shared legal custody. (Mother is not a party to this appeal.) MGM wanted DCFS to investigate father's home to ensure I.A.'s safety, although she had never seen father behave inappropriately with any children, and I.A. had never shown any concern and appeared bonded with father.

The social worker interviewed the victim, who described two incidents when father grabbed her by the waist and tried to get her to sit on him, but she escaped. The third time, father succeeded in grabbing her breasts, pulling down her underwear and

¹ All further statutory references are to the Welfare and Institutions Code.

shorts, and penetrating her with his penis halfway. The victim screamed in pain, he stopped, and she ran away. She was not afraid of father, but was uncomfortable around him. She did not know of any abuse of her siblings, and father behaved appropriately toward I.A. The victim later said that father had grabbed her breasts during the first two incidents. She told no one because no one would believe her. In February 2014, the victim told some friends, and their support made her decide to tell MGM.

School officials reported that I.A. was reasonably healthy, disclosed no safety concerns or fear about going home, and both parents appeared appropriate with I.A. Parental grandparents reported that I.A. was safe and well cared for by father, who was very protective. I.A. showed no signs of abuse and told the social worker that he was comfortable, safe and happy with father, had not been abused or neglected, and had never seen father touch any of his siblings.

Father had no criminal history and denied any child abuse or neglect. When he lived with mother and the victim, he had a “love and hate relationship” with the victim, but never sexually abused her in any way. Mother said her visits with I.A. in father’s home were pleasant, and father was appropriate with I.A. She did not know of father’s sexual abuse but believed the victim because she was her daughter. Even after the divorce, father gave the victim “allowances” of \$30 or \$40, and mother now thought this was hush money. (The victim confirmed that father gave her from \$5 to \$20 each week, but never told her to keep her mouth shut.) The victim’s older sister said that she did not witness any sexual abuse, but the victim did tell her “something happened.”

The social worker concluded that given the victim’s account, I.A. was at risk of abuse and should be removed from father, whose visitation should be supervised.

The victim told the police father first abused her when she was around eight, between June 2008 and June 2009. Mother was out and the victim was lying on her mother’s bed when father came in wearing boxers and a T-shirt. He lay down with her, pulled her shirt up above her breasts and pulled her pants and panties down to her knees. Holding her hands behind her back, father grabbed the victim’s breasts and kissed her vagina. He straddled her and put his penis in her mouth, moving it in and out. She was

afraid he would hurt her. Father removed his penis from the victim's mouth and she saw a liquid substance come out onto the sheets. Father straddled the victim again, spread her legs, and tried to put his penis in her vagina (she was not sure if it penetrated). When the victim felt his grip loosen, she pulled away and ran to her room where she cried. She did not tell mother because she was afraid mother would be upset with her.

About a week later mother was in the shower and the victim was lying on mother's bed watching television. Father lay down, kissed her and tried to put his tongue in her mouth, pulled her shirt up and her pants and panties down to her knees, held her hands behind her back and grabbed the victim's breasts. Father kissed her vagina and she felt his tongue go inside. When he tried to put his penis in her vagina, the victim kicked father in the stomach, making him lose his grip; she ran and hid in her bedroom.

Approximately a week after the second molestation, mother was out and the victim was lying on mother's bed watching television. Father came home from work and lay down next to her, pulling her shirt up and her pants down, grabbing her breasts and "kissing [her] private parts." Father held her wrists behind her back and began to put his penis in the victim's vagina. She screamed in pain, startling father, who lost his grasp. She ran into her room.

Around the same time, father drove the victim to her elementary school, and while the car was in the parking lot he grabbed her vagina hard on top of her clothing. He laughed and said, "Have a good day at school." The victim ran into the school crying.

After the molestations, father called the victim a "bitch" and a "dog." Mother and father separated, and had not been together since. The victim's friends also told the police she said father had touched her breasts and made her suck his penis.

On May 14, 2014, the court detained I.A., removed him from father's home, and placed him with mother, giving father monitored visitation.

Forensic interview on July 17, 2014 and amended petition

In a forensic interview the victim described three instances of sexual abuse by father which she now said occurred when she was six to seven years old. Some details varied from her earlier account. The first incident of abuse happened when she was six,

and father covered her mouth so she couldn't scream. While father tried to put his penis in her vagina, he told her not to tell mother. The second incident happened in the living room when she was six and a half. Father dragged her behind the couch, licked her vagina, and she screamed when he tried to force his penis into her vagina. The third incident happened when the victim had just turned seven and mother was pregnant with I.A. Father stood next to the bed, pushed the victim's head to make her suck his penis, and bent down to lick her vagina. When father put his penis in her vagina it went farther than before, but she screamed, fidgeted, and got away. The victim ran into her room, locked the door, and blocked it with a table. The victim never told mother because she was afraid that father would hurt mother and mother would hurt her.

A first amended petition² filed October 1, 2014 alleged that under section 300, subdivisions (a), (b), and (d), father's sexual abuse of the victim endangered I.A.'s health and safety, and added counts (not in issue here) alleging that I.A. had been physically abused by mother and his half-sisters. A last minute information stated that father had refused to provide an address but since the beginning of the case, was living with parental grandparents. Father was uncooperative, failed to return messages, and claimed he was homeless and living in his car, perhaps to evade the police. The district attorney had rejected the case for prosecution.

Jurisdiction/disposition hearing, January 6 and 7 and February 9, 2015

As to father and I.A., only the allegations under section 300, subdivision (b) and (d) remained to be adjudicated. Father called the victim to testify. In chambers, the victim testified that in 2007 when she was six or seven, father lived in the victim's home

² On August 22, 2014, DCFS filed a petition on behalf of the victim, her older sister, and her other younger half-brother, alleging under section 300, subdivisions (a), (b), (d), and (j) that mother and the other half-brother's father physically abused him, that mother physically abused I.A., and that mother and the other half-brother's father engaged in violent physical altercations, endangering the children. The petition also included a count under section 300, subdivisions (b), (d), and (j) alleging father's sexual abuse of the victim put her and the other two half-siblings at risk of harm. Those allegations are not in issue here.

and she did not like him. Father rubbed her on her private area and on her chest three times. The first time was in her mother's bedroom, while mother took a shower. The second time was in the living room while mother was away, and the third time was in mother's bedroom. Father also touched her in the car at school, laughing and telling her to be good. The victim told no one because she was a child and not strong enough, and mother was physically abusive.

Father testified that he lived with the victim for less than a year and never sexually abused her. Mother was physically abusive to the victim and he left because of the violence. He had conflicts with mother over visitation with I.A.

The social worker testified that she had several visits with I.A. and he showed no signs of abuse, although she was concerned by the victim's report of sexual abuse. A dependency investigator testified that she spoke to the victim six times about sexual abuse by father, and the victim's statements were consistent, although the victim did not tell her about the incident at school. The investigator had spoken with I.A. around six times and did not believe he had been sexually abused by father.

The social worker who investigated the allegations against mother testified that the victim also told her about father's sexual abuse, but she did not interview her in detail. I.A. told her he missed father and wanted to be with him.

In closing, counsel for DCFS argued that the victim was credible despite minor discrepancies, especially since six to seven years had passed. The victim's and I.A.'s counsel both argued that the victim was credible and was a child at the time of the sexual abuse. I.A.'s counsel pointed out that I.A. was reaching the age at which the victim was abused by father, and the abuse was egregious and posed a substantial risk to I.A.

Father's attorney argued that the victim's statements were highly inconsistent, she had a strained relationship with father, and father and mother were engaged in custody and visitation disputes. I.A. had not been abused, the alleged abuse of the victim occurred many years ago, she and I.A. were different genders and ages, and only I.A. was father's biological child.

On February 9, 2015, the juvenile court sustained the counts under section 300, subdivision (b) and (d). The court found the victim's testimony was detailed, consistent, and generally credible, including her description of the fourth instance of sexual abuse, and any inconsistency was explained by the passage of time and her young age at the time of the abuse. The victim had no bias or motive to lie, and her reasons for not reporting the abuse at the time were credible. The court amended the petition to state that the victim (now 15) was six and seven when father abused her. I.A. was now of a similar age; father's three or four instances of sexual abuse of the victim were a repeated abuse of the parental role; father gave the victim money; father never cooperated in the police investigation; and as stated in *In re I.J.* (2013) 56 Cal.4th 766, 778, some risks of low probability may nevertheless be substantial because the potential harm is of great magnitude.

Over father's objections, the juvenile court removed I.A. from father and placed him with mother, ordered family maintenance and enhancement services for father, ordered father to complete sexual abuse counseling, and ordered father's visits to be monitored.

Father filed a timely appeal.

DISCUSSION

As sustained, the allegations under section 300 subdivisions (b) and (d) read as follows: "The child [I.A.]'s father, David [A.], sexually abused the child's half sibling . . . when the child was 6 and 7 years old. On three prior occasions, the father forcibly raped the sibling by placing the father's penis in the sibling's vagina, inflicting pain to the sibling's vagina. On a prior occasion, the father placed the father's penis in the child's mouth. On a prior occasion, the father oral copulated the sibling's vagina. On prior occasions, the father fondled the sibling's breasts. The father's sexual abuse of the child's sibling . . . endangers the child's physical health and safety and places the child at risk of physical harm, damage and sexual abuse." We may affirm the juvenile court's finding of jurisdiction under any one of the statutory bases enumerated in the petition without considering any of the other grounds for jurisdiction. (*In re I.J.*, *supra*, 56

Cal.4th at pp. 773–774.) We address section 300, subdivision (d), which most closely describes I.A.’s situation, stating that jurisdiction over a child arises when “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . by his or her parent . . . or the parent . . . has failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably should have known that the child was in danger of sexual abuse.”

Father does not dispute that substantial evidence supports the finding that he sexually abused the victim. Instead, he contends that substantial evidence does not support the finding that his sexual abuse of the victim put I.A. at substantial risk of sexual abuse, arguing that *In re I.J.*, *supra*, 56 Cal.4th 766, discussed a sustained allegation under section 300, subdivision (j), and so does not apply. He also points out that he never harmed I.A., behaving appropriately with him; the victim was not his biological child; I.A. was a male child and the victim was female; and the abuse was not prolonged or egregious. Father is not correct.

In re I.J., *supra*, 56 Cal.4th 766, 770 addressed “whether a father’s sexual abuse of his *daughter* supports a determination that his *sons* are juvenile court dependents when there is no evidence the father sexually abused or otherwise mistreated the boys, and they were unaware of their sister’s abuse.” The juvenile court had sustained allegations that the father raped, orally copulated, and digitally penetrated his then 14-year-old daughter for the past three years, and the court then declared all the children, including three sons, dependents of the court. (*Id.* at p. 771.) The Supreme Court concluded that “a father’s prolonged and egregious sexual abuse of his own child may provide substantial evidence to support a finding that all his children are juvenile court dependents.” (*Id.* at p. 770.) “[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a ‘substantial risk’ that the child will be abused or neglected.” (*Id.* at p. 773.) Although the risk to another daughter might be greater, “this does not mean the risk to the sons is nonexistent or so insubstantial that the juvenile court may not take steps to protect the sons from that risk.” (*Id.* at pp. 779–780.) The court cautioned: “[W]e are not holding

that the juvenile court is compelled, as a matter of law, to assume jurisdiction over all the children whenever one child is sexually abused. We merely hold the evidence in this case supports the juvenile court's assertion of jurisdiction." (*Id.* at p. 780.)

We reject father's contention that the holding of *In re I.J.*, *supra*, 56 Cal.4th 766, is inapplicable to this case because the allegation was sustained under section 300, subdivision (d) rather than subdivision (j). First, the Supreme Court focused on subdivision (j) because, of the sustained allegations, it "most closely describes the situation regarding the boys." (*In re I.J.*, at p. 774.) Section 300, subdivision (j) provides that a child may be adjudged a dependent if "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." This allows the juvenile court "to consider whether there is a substantial risk that the child will be harmed under subdivision (a), (b), (d), (e), or (i) . . . , notwithstanding which of those subdivisions describes the child's sibling." (*In re I.J.*, at p. 774.) Here the court found that father's sexual abuse of the victim presents a substantial risk that I.A. will also be sexually abused under subdivision (d). Subdivision (j)'s wider reach, allowing the court to assess harm to a sibling under subsections other than those applicable to the abused child, is not necessary to this case. Further, *In re I.J.*, *supra*, 56 Cal.4th at pp. 774–776, discussed, approved, and left intact, *In re P.A.* (2006) 144 Cal.App.4th 1339, 1347 and *In re Karen R.* (2001) 95 Cal.App.4th 84, 89, both of which affirmed a juvenile court's jurisdictional finding under subdivision (d) that a sibling of a sexually abused child was under a substantial risk of sexual abuse.

We reject father's other arguments. He argues the absence of evidence that he harmed I.A., but even where no evidence exists of abuse to the sibling of the sexually abused child, "section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction." (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) It is immaterial that the victim is his stepdaughter and I.A. is his biological child. Such a distinction "is contrary to the holdings and language of the cases that suggest sexual abuse of one child in the household puts at risk other children in the

household. . . . “Incest” . . . encompasses not only sexual relations between a child and a biological parent, but also between a child and an adult who has assumed a parenting role toward the child, whether that adult is married or cohabits with the child’s parent. . . .” (*Los Angeles County Department of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 970.) Father was married to and living with mother when he raped her daughter. That the victim is female and I.A. is male does not mean that the jurisdictional finding was not supported by substantial evidence. “Although the danger of sexual abuse of a female sibling in such a situation may be greater than the danger of sexual abuse of a male sibling, the danger of sexual abuse to the male sibling is nonetheless still substantial.” [Citation.] The juvenile court need not compare relative risks to assume jurisdiction over all the children of a sexual abuser, especially when the abuse was as severe and prolonged as here.” (*In re I.J.*, *supra*, 56 Cal. 4th at p. 780.) Father raped the victim, orally copulated her, and forced her to orally copulate him when she was only six and seven years old. The abuse was egregious and repetitive, and occurred while the victim was very young (six and seven), at an age that I.A. was approaching at the time the court found jurisdiction. “[W]here . . . a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse.” (*In re P.A.*, *supra*, 144 Cal.App.4th at p. 1347.)

Father’s arguments also overlook the limitations on our review, which is to determine whether the record contains substantial evidence, contradicted or uncontradicted, to support the juvenile court’s finding of jurisdiction. We must resolve any evidentiary disputes in favor of the court’s decision, we cannot reweigh the evidence, and we leave to the trial court credibility determinations and issues of fact. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) We merely determine whether sufficient facts support the finding of the trial court (*ibid.*), and we conclude that substantial evidence supported the finding of jurisdiction.

Father also challenges the disposition removing I.A. from his home, arguing there was not clear and convincing evidence of a substantial danger to I.A.’s health and safety

in father's home as required by section 361, subdivision (c)(4). Removal is appropriate if the court finds by clear and convincing evidence that the child would be at substantial risk of harm if returned home, and there are no reasonable means to protect the child short of removal. "The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) "[O]n appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.'"" (*In re J. I.* (2003) 108 Cal.App.4th 903, 911.) The evidence showed that father inflicted severe sexual abuse on the victim when she was six and seven; I.A. was six at the time of disposition. Father groped the victim and then ridiculed her in his car in the parking lot of her elementary school, and verbally abused the victim after the molestations by calling her a bitch and a dog. Father gave the victim money regularly even after his divorce from mother, supporting an inference he wanted to keep the victim quiet. He went to live with the paternal grandparents, refused to provide DCFS with his address or otherwise cooperate, and instead claimed he was homeless and lived in his car, supporting an inference that he was evading the police. This was substantial evidence to support the juvenile court's finding that there was no reasonable means to protect I.A.'s safety without removing him from father's care.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.